

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

**IN RE: ZIMMER DUROM HIP CUP
PRODUCTS LIABILITY LITIGATION**

MDL No. 2158

TRANSFER ORDER

Before the Panel: Plaintiff in the Northern District of Illinois action listed on the attached Schedule A (*Douglas*) moves under Panel Rule 7.1 to vacate our order conditionally transferring the action to the District of New Jersey for inclusion in MDL No. 2158. Defendants Zimmer, Inc., and Zimmer Holdings, Inc., oppose the motion.

In support of his motion to vacate, the *Douglas* plaintiff principally argues that his action was improperly removed, and he has a pending motion for remand to state court. This argument is unconvincing. The Panel often has held that jurisdictional issues do not present an impediment to transfer, as the parties can present their arguments regarding those issues to the transferee judge.¹ See, e.g., *In re: Prudential Ins. Co. of Am. Sales Practices Litig.*, 170 F. Supp. 2d 1346, 1347-48 (J.P.M.L. 2001).

After considering the argument of counsel, we find that the *Douglas* action involves common questions of fact with actions previously transferred to MDL No. 2158, and that transfer will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. The actions in the MDL “share factual issues as to whether Zimmer’s Durom Acetabular Component (or Durom Cup), a device used in hip replacement surgery, was defectively designed and/or manufactured, and whether Zimmer failed to provide adequate warnings concerning the device.” See *In re: Zimmer Durom Hip Cup Prods. Liab. Litig.*, 717 F. Supp. 2d 1376, 1377 (J.P.M.L. 2010). Plaintiff does not dispute that his action also involves those issues.

¹ Moreover, under *Panel Rule 2.1(d)*, the pendency of a conditional transfer order does not limit the pretrial jurisdiction of the court in which the subject action is pending. Between the date a remand motion is filed and the date that transfer of the action to the MDL is finalized, a court generally has adequate time to rule on a remand motion if it chooses to do so.

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IT IS THEREFORE ORDERED that the *Douglas* action is transferred to the District of New Jersey, and, with the consent of that court, assigned to the Honorable Susan D. Wigenton for inclusion in the coordinated or consolidated pretrial proceedings.

PANEL ON MULTIDISTRICT LITIGATION



Sarah S. Vance
Chair

Marjorie O. Rendell
Lewis A. Kaplan
R. David Proctor

Charles R. Breyer
Ellen Segal Huvelle
Catherine D. Perry

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MDL No. 2158

SCHEDULE A

Northern District of Illinois

DOUGLAS v. ZIMMER US, INC., ET AL., C.A. No. 1:16-04722